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c 193 Habeas Corpus Act

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CHAPTER 193

Habeas Corpus Act

1.—(1) Where a person, other than a person imprisoned for debt, or by process in any action, or by the judgment, conviction or order of the Supreme Court, court of general sessions of the peace or other court of record is confined or restrained of his liberty, a judge of the Supreme Court, upon complaint made by or on behalf of the person so confined or restrained, if it appears by affidavit that there is reasonable and probable ground for the complaint, shall award a writ of *habeas corpus ad subjiciendum* directed to the person in whose custody or power the person so confined or restrained is, returnable immediately before the judge so awarding the writ, or before any judge of the Supreme Court. R.S.O. 1970, c. 197, s. 1 (1); R.S.O. 1970, c. 197, s. 12 (1).

In what cases *habeas corpus ad subjiciendum* may be awarded, and by whom

(2) Notice in writing of every application for a writ of *habeas corpus ad subjiciendum* shall be given to the Attorney General at least forty-eight hours before the making of the application and the Attorney General is entitled as of right to be heard either in person or by counsel upon the application. R.S.O. 1970, c. 197, s. 1 (2); 1972, c. 1, s. 9 (7).

Notice of application for writ of *habeas corpus*

2. The writ may be served either personally by actual delivery thereof to the person to whom it is directed or by leaving it with his servant or agent at the place where the person is so confined or restrained. R.S.O. 1970, c. 197, s. 2.

Service of writ

3. If the person to whom the writ is directed wilfully neglects or refuses to make a return or pay obedience thereto, he shall be deemed guilty of contempt of court, and the court or judge, upon proof by affidavit of such wilful neglect, refusal or disobedience, may issue a warrant for apprehending and bringing him before the court or judge to the end that he may be bound to Her Majesty with two sufficient sureties in such sum as in the warrant is expressed, conditioned that he will appear on the day named in the warrant to answer the matter of the contempt. R.S.O. 1970, c. 197, s. 3.

Disobedience of writ

4. In case of neglect or refusal to become bound as aforesaid, the court or judge may commit such person to a correctional institution in the county wherein he resides or may be found, there to remain until he becomes bound as aforesaid

Committal

or is discharged by order of the court or a judge, and, if he becomes bound, the recognizance shall be returned and filed and continues in force until the matter of the contempt has been heard and determined, unless sooner ordered by the court or judge to be discharged. R.S.O. 1970, c. 197, s. 4.

Issue of writ of *certiorari*

5. Where a writ of *habeas corpus* is issued under the authority of this Act or otherwise, the court or judge may direct the issue of a writ of *certiorari* directed to the person by whom or by whose authority any person is confined or restrained of his liberty, or other person having his custody or control, requiring him to certify and return to the court or judge as by the writ may be provided, all the evidence, depositions, conviction and all proceedings had or taken, touching or concerning such confinement or restraint of liberty. R.S.O. 1970, c. 197, s. 5.

Procedure on return of writ

6. When upon a return to a writ of *habeas corpus* it is alleged that the person is detained by reason of a conviction or order other than a conviction or order of the Supreme Court or other court of record upon the return of the writ of *certiorari*, it is the duty of the court or judge to examine and consider the proceedings had and taken to ascertain if the proceedings show that the person restrained has been convicted of any offence against the law and that there is any evidence to sustain the conviction, or that upon the evidence the person accused is guilty of an offence against the law and that the conviction, though irregular, ought to be amended or drawn so as to duly describe the offence of which the person accused is guilty, and in such cases to remand the person detained to custody but otherwise to order his discharge. R.S.O. 1970, c. 197, s. 6.

Proceedings for inquiring into the truth of the matters alleged in the return

7. Although the return to a writ of *habeas corpus* is good and sufficient in law, the court or judge before whom the writ is returnable may examine into the truth of the facts set forth in the return, by affidavit or other evidence, and may order and determine touching the discharging, bailing or remanding the person. R.S.O. 1970, c. 197, s. 7.

Appeal from remand to custody

8.—(1) Where a person confined or restrained of his liberty is brought before a judge upon a writ of *habeas corpus* and is remanded into custody upon the original order or warrant of commitment or by virtue of any warrant, order or rule of such judge, such person may appeal from the decision or judgment of the judge to the Divisional Court, and thereupon the writ of *habeas corpus*, the return thereto, and the affidavits, depositions, evidence, conviction and other proceedings shall be certified by the proper officer to the Divisional Court. R.S.O. 1970, c. 197, s. 8 (1); R.S.O. 1970, c. 197, s. 12 (2).

(2) The Divisional Court shall thereupon hear and determine the appeal without formal pleadings and, if the court determines that the confinement or restraint is illegal, shall so certify to the person having the custody or charge of the person so confined or restrained, and shall order his immediate discharge, and he shall be discharged accordingly. R.S.O. 1970, c. 197, s. 8 (2); R.S.O. 1970, c. 197, s. 12 (3). ^{Court may order discharge}

9. An appellant under section 8 may appeal from the decision of the Divisional Court to the Court of Appeal. R.S.O. 1970, c. 197, s. 9 (1). ^{Appeal to Court of Appeal}

10. This Act extends to all writs of *habeas corpus* awarded in pursuance of the Act passed in England in the 31st year of the reign of King Charles the Second, commonly called *The Habeas Corpus Act*, or otherwise in as ample and beneficial a manner as if such writs and the cases arising thereon had been specially named and provided for in this Act. R.S.O. 1970, c. 197, s. 10. ^{Application of Act}

11. Subject to the approval of the Lieutenant Governor in Council, the Rules Committee may make such rules of practice in reference to the proceedings on writs of *habeas corpus* as seem necessary or expedient. R.S.O. 1970, c. 197, s. 11. ^{Power to make rules}

